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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Barton, <i>et al.</i>	January 22, 2010
Patent No.:	7,662,302	Issue Date: November 24, 2009
Serial No.	10/552,571	Group Art Unit No.: 1633
Filed:	11 October 2005	Examiner: Scott Long
For:	PROCESS FOR IMPROVING THE MANUFACTURE OF CLAVAMS E.G. CLAVULANIC ACID	

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REQUEST FOR RECONSIDERATION OF PATENT TERM UNDER 37 CFR §1.705(d)

This is a request for reconsideration of patent term adjustment pursuant to 37 CFR §1.705(d), according to which the applicants may request reconsideration within two months from the date the patent issued if the patent indicates or should have indicated a revised patent term adjustment. Applicants respectfully seek 304 days of patent term adjustment in addition to the 186 days stated on the Issue Notification for a total of 490 days. Accompanying this request is the required processing fee set forth in 37 CFR § 1.18(e). Please charge any requisite fees or reimburse any overcharge relating to this amendment and response to Deposit Account No. 19-2570. The statement of facts supporting this request is set forth below pursuant to 37 CFR §1.705(b)(2).

Relevant Dates:

Priority Date: April 15, 2003
30th month ended: October 14, 2005
National stage commencement date: October 11, 2005
35 U.S.C. 371(c) completion date: October 11, 2005
3-year pendency ended: October 10, 2008
Issue date: November 24, 2009

A delay

Under 35 U.S.C. § 154(b)(1)(A), the applicant is guaranteed prompt USPTO (hereafter “the Office”) responses. If the issue of an original patent is delayed due to the failure of the Office to engage in reasonable efforts to conclude prosecution, the term of the patent shall be extended in accordance with 37 CFR § 1.703(a), hereinafter referred to as A delay. Here, the A delay was calculated to be 409 days ($171 + 133 + 105 = 409$) caused by the failure of the Office to engage in reasonable efforts to conclude prosecution. Applicants disagree with the Office’s calculation. Applicants assert that the A delay is 304 days ($171 + 133 = 304$).

B delay

Under 35 U.S.C. § 154(b)(1)(B), the applicant is guaranteed of no more than a 3-year application pendency. Delay caused by the failure of the Office to issue a patent within 3 years is assessed in accordance with 37 CFR § 1.703(b), hereinafter referred to as B delay. The term of a patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued, not including any delay in the processing of the application requested by the applicant.

“The period of adjustment under § 1.702(b) is the number of days, if any, in the period beginning on the day after the date that is three years after the the date on which the appliation was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application and ending on the date a patent was issued, but not including the sum of the following periods:

(1) The number of days, if any, in the period beginning on the date on which a request for continued examination of the application under 35 U.S.C. 132(b) was filed and ending on the date the patent was issued;” 37 CFR 1.703(b)(1).

The starting date of the 3-year period is set forth in 35 U.S.C. 371(b): “Subject to subsection (f) of this section, the national stage shall commence with the expiration of the applicable time limit under article 22(1) or (2) or under article 39(1) of the [PCT] treaty.” According to the above, the national stage of the present application commenced on October 11, 2005, and the 3-year pendency ended on October 10, 2008. Applicants assert that the total B delay is the period beginning on October 11, 2008, and ending on the date the patent issued, November 24, 2009, making the total B delay 409 days. It appears that the Office incorrectly calculated the B delay to be 105 days ($409 - 171 - 133 = 105$)

Applicants delay

Applicants agree with the Office that under 37 CFR § 1.704 the delay caused by the applicant is 223 days. However, the currently indicated 186 days of A delay on the issued patent is incorrect. A total of 223 days should be subtracted from the 304 days of Office A delay calculated above. Therefore, the total A delay is 81 days ($304 - 223 = 81$).

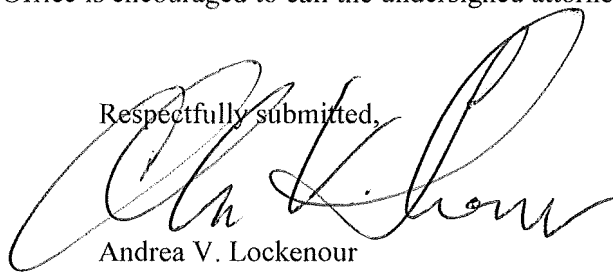
Overlapping period and total patent term adjustment

According to § 1.703(f), the term of a patent is entitled to adjustment under § 1.702 and the term shall be adjusted for the sum of the periods calculated under paragraphs (a) through (e) of this section, to the extent that such periods are not overlapping, less the sum of the periods calculated under § 1.704.

In Wyeth v. Dudas, the US district court for DC found, and the Court of Appeals for the Federal Circuit recently upheld in Wyeth v. Kappos, that the only way periods of time can “overlap” is if the A and B delays occur on the same day, and that the B delay begins when the PTO has failed to issue a patent within three years, not before.¹ Here, the overlap period determined according to the holding in Wyeth is 0 days.

Applicant contends that the total patent term adjustment the above patent is entitled to, as explained herein, should be 490 days ($304 + 409 - 0 - 223 = 490$). Applicants hereby respectfully request reconsideration of the patent term adjustment of the above-referenced patent. If a telephone conference would help the Office determine this matter, the Office is encouraged to call the undersigned attorney.

Respectfully submitted,



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¹ Wyeth v. Dudas, 580 F. Supp. 2d 138, 142 and Wyeth v. Kappos (Fed Cir. 2009-1120)